



July 2, 1999

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-1844

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125376.

The Texas Department of Health (the “department”) received a request for complaints filed against a particular professional counselor. Although you have released some of the requested information, you assert that portions of the requested information are made confidential by a state statute, the informer’s privilege, or the common-law right to privacy and, therefore, are excepted from required public disclosure under section 552.101 of the Government Code. You have submitted the requested information to this office for review.

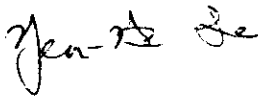
Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 611.002 of the Health and Safety Code applies to “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” *See also* Health & Safety Code § 611.001 (defining “patient” and “professional”). We agree that the two documents you have marked as protected by section 611.002 may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

Section 552.101 of the Government Code also applies to information made confidential by law the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be

withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* While we agree with some of your markings, we have marked the information that is not protected from disclosure under the common-law right to privacy and must be released.<sup>1</sup> In addition, we note that the submitted information includes a court document. Documents filed with a court are generally a matter of public record and may not be withheld from disclosure. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, unless the court has sealed the document, you must release the court record in its entirety.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 125376

Encl.: Marked documents

cc: Mr. Isaac C. Satterwhite  
312 Chateau Woods Parkway  
Conroe, Texas 77585  
(w/o enclosures)

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<sup>1</sup>The information we have marked as protected by common-law privacy includes information you have asserted is protected by the informer's privilege. Therefore, we need not discuss the informer's privilege.